

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GIRARD ALLEN STEVENSON,

Defendant-Appellant.

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UNPUBLISHED

October 1, 2009

No. 287182

Oakland Circuit Court

LC No. 2008-218674-FC

Before: Murray, P.J., and Markey and Borrello, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to murder, MCL 750.83, and felonious assault, MCL 750.82. He was sentenced to concurrent prison terms of 12 to 40 years and 30 months to 4 years, respectively. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that the evidence was insufficient to sustain the verdict of assault with intent to murder. On appeal, we review the record de novo, viewing the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). “It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences.” *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All conflicts in the evidence are to be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The elements of assault with intent to murder are “(1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder.” *Hoffman, supra* at 111. The defendant’s intent

may be gleaned from the nature of the defendant's acts constituting the assault, the temper or disposition of mind with which they were apparently performed, whether the instrument and means used were naturally adapted to produce death, [the defendant's] conduct and declarations prior to, at the time, and after the

assault, and all other circumstances calculated to throw light upon the intention with which the assault was made. [*People v Brown*, 267 Mich App 141, 149 n 5; 703 NW2d 230 (2005) (quotation marks and citations omitted).]

“Because of the difficulty of proving an actor’s state of mind, minimal circumstantial evidence of intent to kill is sufficient.” *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

The evidence, when viewed in a light most favorable to the prosecution, was sufficient to sustain the verdict. Two days before the attack, defendant threatened to kill the victim. On the day of the attack, he broke the victim’s telephone so she could not call for help. He choked her and threatened to kill her. He put a knife to her throat and threatened to “stick her” should anyone try to interfere. When the victim tried to get away from defendant, he did in fact stab her while chasing her into the yard. Before leaving the scene, he threatened to kill her once again. The evidence was thus sufficient to permit a rational juror to conclude beyond a reasonable doubt that defendant acted with an intent to kill. Although defendant did not inflict fatal or even life-threatening injuries, proof of physical injury is not necessary. See *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996); *People v Hollis*, 140 Mich App 589, 591, 593; 366 NW2d 29 (1985).

Defendant next contends that the trial court erred in electing not to depart downward from the statutory guidelines and thus the sentence imposed was disproportionate.

Assault with intent to murder is a Class A offense subject to the legislative guidelines. MCL 777.16d. The principle of proportionality is generally inapplicable to sentences determined under the legislative guidelines. *People v Babcock*, 244 Mich App 64, 78; 624 NW2d 479 (2000). Rather, proportionality is an inherent function of the guidelines, *People v Babcock*, 469 Mich 247, 263-264; 666 NW2d 231 (2003), and thus a challenge based on proportionality cannot be considered. *People v Pratt*, 254 Mich App 425, 429-430; 656 NW2d 866 (2002). The trial court’s minimum sentence of 12 years was within the minimum sentence range of 126 to 210 months. A sentence that is within the guidelines must be affirmed on appeal unless it was based on inaccurate information or an error in the scoring of the guidelines is shown. MCL 769.34(10). Because defendant has not alleged an error in the scoring of the guidelines or the use of inaccurate information by the trial court in determining his sentence, we must affirm.

Affirmed.

/s/ Christopher M. Murray  
/s/ Jane E. Markey  
/s/ Stephen L. Borrello